

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO RIVERA, SAILITO DELA CRUZ, FERNANDO VISO AND MELITO CATARUNGAN, ACCUSED, ANTONIO RIVERA, ACCUSED-APPELLANT.

G.R. No. 94129, March 11, 1992

Ponente: PARAS, J.

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PARAS, J.:

Appeal from the decision of the Regional Trial Court of Masbate, Branch 47 finding Antonio Rivera guilty beyond reasonable doubt of Murder, the dispositive portion of which reads:

“WHEREFORE, it having been established beyond reasonable doubt that accused Antonio Rivera committed the offense charged with the aid of his companions (who are still at large), namely, Sailito dela Cruz, Fernando Viso and Melito Catarungan, employing superior strength in the process, which aggravating circumstance is not offset by any mitigating circumstance, said Antonio Rivera is penalized under Article 248 (par. 1) of the Revised Penal code and is hereby sentenced to the extreme penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties provided for by law; and to pay the costs. xxx” (Decision, p. 5)

Co-accused Sailito dela Cruz, Fernando Viso and Melito Catarungan have up to the present remained at large.

The facts established by the prosecution and accepted by the trial court as basis for the decision, are summarized as follows:

In the evening of August 2, 1986, Melchor and Loreto Botero, together with Rolando Sombese and some women, attended a dance party at the plaza of Bgy. del Rosario in Uson, Masbate. At about 11:00 o'clock that evening while the dance was in progress, Fernando Viso boxed Rolando, who was seated on a bench beside Melchor and two women. Then Antonio Rivera, armed with a bladed weapon, stabbed Melchor, who was hit in his left nipple. Sailito followed suit and likewise with his bladed weapon stabbed Melchor on his left arm. Thereafter, Sailito dela Cruz, Fernando Viso and Melito Catarungan dragged Melchor to the other side of the road about two meters away and there they took turns in stabbing Melchor to death. (pp. 129-136, tsn., July 13, 1987)

When the assailants left, Rolando immediately reported the incident to the barangay authorities. Early next morning, Pat. Andaya investigated the crime scene and there he learned from Rolando and Loreto that Antonio, Sailito, Melito and another person whose name he could not remember had killed Melchor. (pp. 3--4, tsn., March 15, 1988).

At the trial, Dr. Erlinda V. Sanchez who conducted the postmortem examination of the cadaver of the victim, testified: that the victim died of shock secondary to hemorrhage caused by multiple stab and incised wounds: that he found four stab wounds and seven incised wounds, to wit:

“Stab wounds:

a) 1 1/2 inches wide, 4th intercostal space, beside the left nipple, along the clavicular line, penetrating thru the

thorax, with exit at posterior thorax, beside the lower angle of the left scapula

b) 1 inch wide, penetrating 2 inches below the left nipple

c) 1 inch wide, penetrating 5th ICS, along the anterior axillary line left side

d) 2 inches wide, 3 inches deep, left forearm, proximal 3rd, just below the deltoid muscle

“Incised Wounds:

a) 2 inches long, sternum, lower portion

b) 2 inches long left forearm, postero-medial aspect, middle 3rd

c) 2 inches long, left forearm, antero-lateral aspect, middle 3rd

d) 2 inches long, left forearm, antero-lateral aspect, middle 3rd, 1 1/2 inches from the above wound (c)

e) 1 1/2 inches long right forearm, posterior aspect, middle 3rd

f) 1 1/2 inches long, anterior portion middle 3rd, right forearm

g) 1 inch long, anterior portion, middle portion, right forearm, 2 inches from the above wound (f).

that wound letter B below the left nipple could be fatal because it is near the heart; that the victim’s wounds could have been inflicted by one or more persons; and that the weapons used are sharp pointed instruments, or possibly a sharp pointed bolo. (pp. 149-158, tsn., September 15, 1987).

The appellant, on the other hand, denied participation in the commission of the crime and claimed that when the incident happened on that fateful night, he was asleep in the house of his parents at Bgy. Mongahay which is about 5 kilometers away from the scene of the crime; that earlier that day, he got tired of plowing the fields so he stayed at home and rested; that he never attended a dance party in Bgy. del Rosario; and that he does not know the victim Melchor nor any of his co-accused.. (pp. 174-177, tsn., October 3, 1989).

Antonio’s alibi was corroborated by his friend, Domingo Garcia, who testified that at about 4:00 o’clock in the afternoon of August 2, 1986, he dropped by Antonio’s house but the latter refused to go to the dance party in Bgy. del Rosario because he was tired; that he (Domingo) attended said dance party and stayed until past midnight but nothing unusual happened that night; and that he learned about the incident when he went to the plaza to play basketball the next day. (pp. 89-93, tsn., October 4, 1989).

In this appeal, Antonio claims that the trial court erred in disregarding his alibi and in not acquitting him of the crime charged. Among others, he claims that Rolando’s testimony is improbable and contrary to human experience because he declared that no commotion took place when the stabbing incident happened when ordinarily, such an incident would send people scampering for safety.

We disagree.

Rolando’s positive identification of Antonio as one of the assailants of Melchor is not rendered doubtful by the circumstance that no frenzied commotion took place during the stabbing incident. Rolando could well identify Antonio because the place was then well-lighted, he was perilously close to Melchor when the incident occurred, and he was familiar with Antonio and the latter’s company. Vividly, Rolando narrated:

Q. And you told us that you were boxed by Fernando Viso, were you hit?

A. Yes, sir I was hit on my shoulder.

Q. What happened after that?

A. I fell from the bench.

Q. After that what happened next?

A. Antonio Rivera came and stabbed Melchor Botero.

Q. Was Melchor Botero hit when Antonio Rivera stabbed him?

A. Yes, sir.

Q. Where was he hit?

A. On his left nipple. (tsn, July 13, 1987, p. 4)

x x x

Q. How far were you when this Melchor Botero was stabbed by Antonio Rivera?

A. We were sitting side by side. (tsn, July 13, 1987, p. 4)

x x x

Q. Was there a dance going on when Melchor Botero was stabbed by Antonio Rivera?

A. Yes, sir.

Q. What was . . . Was there a light during that dance?

A. Yes, sir.

Q. What was the light?

A. Two (2) coleman.

Q. How far was the light or the coleman to the place the bench where you and Melchor were seated and you were boxed by Fernando Viso?

A. The two (2) coleman were in front of us. (tsn, July 12, 1987, pp. 4--5)

Rolando could very well recognize Antonio Rivera because that was not the first time he saw appellant. Sombese further testified:

Q. You came to know Antonio Rivera when he was already the accused in this case?

A. I knew him already because everytime we had a benefit dance they used to go there.

Q. You said they, to whom are you referring when you said they that went to your place whenever you held a benefit dance?

A. Antonio Rivera, Fernando Viso, Sailito dela Cruz and Melito Catarungan. (tsn, July 13, 1987, p. 9)

Thus, the trial court correctly accorded great weight to Rolando's testimony, viz:

"...there was nothing said that he had an evil motive in testifying against the accused for an offense which carries with it a grave penalty, neither was [there] any showing that he had a relation to the victim. What he had testified to was based on what he saw at the time, and what was uppermost in his mind when he immediately brought the matter to the attention of the authorities in order that the authors of the crime must account for what they did."

(Decision, p. 4).

In addition, strengthening Rolando's identification and narration is Loreto's corroborative testimony. He testified:

Q. After that what happened next?

A. The one sitting behind Rolando Sombese who is Melchor Botero was held by Sailito dela Cruz and stabbed by Antonio Rivera.

Q. How far were you when this thing happened?

A. (Witness pointing from the place where he was seated to the corner of the courtroom which is about 3 meters away).

Q. Was there light in the barangay plaza at the time?

A. Yes, sir.

Q. What was the light?

A. Coleman.

Q. In that place where the incident took place, was that place reached by the coleman?

A. Yes, sir. (tsn, May 11, 1988, p. 2)

Having thus shown Antonio's indubitable participation in the mortal assault upon Melchor, the alleged lack of commotion during the incident becomes inconsequential and even irrelevant. Likewise, Antonio's defense of alibi must be rejected. Alibi cannot prevail over the positive identification made by prosecution witnesses. (People v. Temblor, 151 SCRA 623)

Antonio cites an inconsistency between the testimonies of Rolando and Loreto in that the former testified that the victim was immediately stabbed by Antonio while Loreto swore that the victim was held by Sailito before being stabbed by Antonio. From this, Antonio concludes that the contradicting testimonies cast serious doubt on the truthfulness of the charge against him. (Appellant's Brief, p. 8).

The argument is untenable.

The absence of uniformity to the last detail of the testimonies of Rolando and Loreto does not denigrate upon their credibility. Instead, their testimonies, concurring as they do upon a vital point - that Antonio stabbed Melchor in the first round of assault - enhances and polishes their trustworthiness. (People v. Ferrera 151 SCRA 113)

Finally, Antonio and his companions took advantage of their superior strength when first, Antonio attacked and stabbed the unsuspecting Melchor and then Sailito, Melito and Fernando stabbed him in unison, thereby rendering Melchor helpless in defending himself.

WHEREFORE, the judgement appealed from is hereby AFFIRMED. In view, however, of the pronouncement in People v. Sison (G.R. No. 86455 promulgated September 14, 1990), the indemnity to be paid should be increased to P50,000.00.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

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